

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA – WHEELING DIVISION**

MOUNDSVILLE WATER BOARD,

C.A. No.: 5:09-CV-00113

Plaintiff,

The Honorable Frederick P. Stamp, Jr.

v.

Electronic Filing

SHOOK, INC. HEAVY &  
ENVIRONMENTAL DIVISION, LIBERTY  
MUTUAL INSURANCE COMPANY and  
GLEN P. CROUSE,

Defendants.

**DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY'S  
RESPONSE TO PLAINTIFF'S EMERGENCY MOTION TO STAY**

NOW COMES Defendant, Liberty Mutual Insurance Company ("Liberty Mutual"), by and through its undersigned counsel, Avrum Levicoff, Esquire and Levicoff, Silko & Deemer, P.C., and files this Response to the Plaintiff's Emergency Motion to Stay, and states as follows:

1. On or about September 18, 2009, Plaintiff Moundsville Water Board ("Moundsville"), instituted this action by filing a Complaint in the Circuit Court of Marshall County, West Virginia.

2. On October 9, 2009, the Defendants removed this matter to this Court based upon diversity of citizenship between the parties to the controversy. The Defendants contend that the Plaintiff improperly or fraudulently joined Defendant Crouse in this action solely for the purpose of attempting to destroy diversity of citizenship and prevent removal. Consequently, it is appropriate for the Court to disregard Defendant Crouse's West Virginia citizenship for jurisdictional purposes. If Crouse's citizenship is disregarded, there is otherwise a complete

diversity of citizenship between the parties to the controversy and, thus, removal jurisdiction would be appropriate.

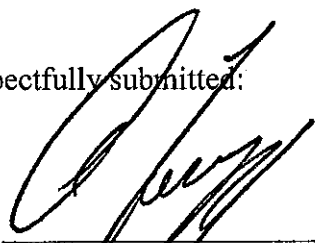
3. On October 23, 2009, Moundsville filed a Motion to Remand this matter to the Circuit Court of Marshall County, West Virginia asserting that this Court lacks subject matter jurisdiction. This Motion to Remand is currently pending before the Court.

4. On October 23, 2009, Moundsville also filed an Emergency Motion to Stay requesting that the Court stay all other matters related to this action pending the resolution of the issue of subject matter jurisdiction raised in the Motion to Remand.

5. Liberty Mutual respectfully submits that Moundsville's Emergency Motion to Stay should be denied. In this Court, it is not customary practice to stay an action because of the pendency of a Motion. It is also not customary to stay an action because a party has challenged the subject matter jurisdiction of the Court. The issues raised in this action exist and must be addressed whether the case remains in this Court or is remanded to the Circuit Court of Marshall County, West Virginia.

WHEREFORE, Liberty Mutual respectfully requests that this Court deny Moundsville's Emergency Motion to Stay.

Respectfully submitted:

By: 

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*Counsel for Defendant Liberty Mutual  
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**CERTIFICATE OF SERVICE**

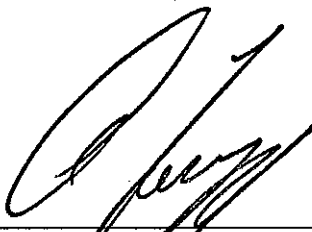
I hereby certify that on October 29, 2009, I electronically filed the foregoing DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY'S RESPONSE TO PLAINTIFF'S EMERGENCY MOTION TO STAY with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

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By: \_\_\_\_\_



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